

1 MORGAN, LEWIS & BOCKIUS LLP
Collie F. James IV, Bar No. 192318
2 collie.james@morganlewis.com
600 Anton Boulevard, Suite 1800
3 Costa Mesa, CA 92626-7653
Tel: +1.714.830.0600
4 Fax: +1.714.830.0700

5 MORGAN, LEWIS & BOCKIUS LLP
Benjamin K. Jacobs (Admitted *Pro Hac Vice*)
6 benjamin.jacobs@morganlewis.com
1701 Market Street
7 Philadelphia, PA 19103-2921
Tel.: +1.215.963.5000
8 Fax: +1.215.963.5001

9 Attorneys for Defendant
10 PEPPERIDGE FARM, INCORPORATED

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION
14

15 TONY SHERMAN, an individual,
16 Plaintiff,
17 vs.
18 PEPPERIDGE FARM,
INCORPORATED, a Connecticut
19 Corporation, and DOES 1-50, inclusive,
20 Defendant.
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Case No. 8:22-cv-01781 JWH (ADSx)

**ORDER GRANTING
STIPULATED PROTECTIVE
ORDER**

DISCOVERY MATTER

[Discovery Document: Referred to
Magistrate Judge Autumn D. Spaeth]

1 Pursuant to Plaintiff Tony Sherman (“Plaintiff”) and Defendant Pepperidge
2 Farm, Incorporated’s (“Pepperidge Farm”) stipulation, and good cause appearing
3 therefor, the Court makes the following findings and enters the following Stipulated
4 Protective Order pursuant to Federal Rule of Civil Procedure 26(c):

5 **I. PURPOSES AND LIMITATIONS**

6 A. Discovery in this action is likely to involve production of confidential,
7 proprietary, or private information for which special protection from public
8 disclosure and from use for any purpose other than prosecuting this litigation
9 may be warranted. Accordingly, the parties hereby stipulate to and petition
10 the Court to enter the following Stipulated Protective Order. The parties
11 acknowledge that this Order does not confer blanket protections on all
12 disclosures or responses to discovery and that the protection it affords from
13 public disclosure and use extends only to the limited information or items
14 that are entitled to confidential treatment under the applicable legal
15 principles. The parties further acknowledge, as set forth in Section XIII(C),
16 below, that this Stipulated Protective Order does not entitle them to file
17 confidential information under seal; Civil Local Rule 79-5 sets forth the
18 procedures that must be followed and the standards that will be applied when
19 a party seeks permission from the Court to file material under seal.

20 **II. GOOD CAUSE STATEMENT**

21 A. This action is likely to involve sensitive commercial information and
22 information about non-parties for which special protection from public
23 disclosure and from use for any purpose other than prosecution of this action
24 is warranted. Accordingly, to expedite the flow of information, to facilitate
25 the prompt resolution of disputes over confidentiality of discovery materials,
26 to adequately protect information the parties are entitled to keep confidential,
27 to ensure that the parties are permitted reasonable necessary uses of such
28 material in preparation for and in the conduct of trial, to address their

1 handling at the end of the litigation, and serve the ends of justice, a protective
 2 order for such information is justified in this matter. It is the intent of the
 3 parties that information will not be designated as confidential for tactical
 4 reasons and that nothing be so designated without a good faith belief that it
 5 has been maintained in a confidential, non-public manner, and there is good
 6 cause why it should not be part of the public record of this case.

7 **III. DEFINITIONS**

8 A. Action: this pending federal lawsuit, i.e., *Tony Sherman v. Pepperidge*
 9 *Farm, Inc., et al.*, Case No. 8:22-cv-01781 JWH (ADSx).

10 B. Challenging Party: A Party or Non-Party that challenges the
 11 designation of information or items under this Order.

12 C. “CONFIDENTIAL” Information or Items: Information (regardless of
 13 how it is generated, stored or maintained) or tangible things that qualify for
 14 protection under Federal Rule of Civil Procedure 26(c), and as specified
 15 above in the Good Cause Statement.

16 D. Counsel: Outside Counsel of Record and House Counsel (as well as
 17 their support staff).

18 E. Designating Party: A Party or Non-Party that designates information
 19 or items that it produces in disclosures or in responses to discovery as
 20 “CONFIDENTIAL.”

21 F. Disclosure or Discovery Material: All items or information, regardless
 22 of the medium or manner in which it is generated, stored, or maintained
 23 (including, among other things, testimony, transcripts, and tangible things),
 24 that are produced or generated in disclosures or responses to discovery in this
 25 matter.

26 G. Expert: A person with specialized knowledge or experience in a
 27 matter pertinent to the litigation who has been retained by a Party or its
 28 counsel to serve as an expert witness or as a consultant in this Action.

1 H. House Counsel: Attorneys who are employees of a party to this
 2 Action. House Counsel does not include Outside Counsel of Record or any
 3 other outside counsel.

4 I. Non-Party: Any natural person, partnership, corporation, association,
 5 or other legal entity not named as a Party to this action.

6 J. Outside Counsel of Record: Attorneys who are not employees of a
 7 party to this Action but are retained to represent or advise a party to this
 8 Action and have appeared in this Action on behalf of that party or are
 9 affiliated with a law firm which has appeared on behalf of that party, and
 10 includes support staff.

11 K. Party: Any party to this Action, including all of its officers, directors,
 12 employees, consultants, retained experts, and Outside Counsel of Record
 13 (and their support staffs).

14 L. Producing Party: A Party or Non-Party that produces Disclosure or
 15 Discovery Material in this Action.

16 M. Professional Vendors: Persons or entities that provide litigation
 17 support services (e.g., photocopying, videotaping, translating, preparing
 18 exhibits or demonstrations, and organizing, storing, or retrieving data in any
 19 form or medium) and their employees and subcontractors.

20 N. Protected Material: Any Disclosure or Discovery Material that is
 21 designated as "CONFIDENTIAL."

22 O. Receiving Party: A Party that receives Disclosure or Discovery
 23 Material from a Producing Party.

24 IV. SCOPE

25 A. The protections conferred by this Stipulation and Order cover not only
 26 Protected Material (as defined above), but also (1) any information copied or
 27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected
2 Material.

3 B. Any use of Protected Material at trial shall be governed by the orders
4 of the trial judge. This Order does not govern the use of Protected Material at trial.

5 **V. DURATION**

6 A. Even after final disposition of this litigation, the confidentiality
7 obligations imposed by this Order shall remain in effect until a Designating
8 Party agrees otherwise in writing or a court order otherwise directs. Final
9 disposition shall be deemed to be the later of (1) dismissal of all claims and
10 defenses in this Action, with or without prejudice; and (2) final judgment
11 herein after the completion and exhaustion of all appeals, rehearings,
12 remands, trials, or reviews of this Action, including the time limits for filing
13 any motions or applications for extension of time pursuant to applicable law.

14 **VI. DESIGNATING PROTECTED MATERIAL**

15 A. Exercise of Restraint and Care in Designating Material for Protection

16 1. Each Party or Non-Party that designates information or items for
17 protection under this Order must take care to limit any such
18 designation to specific material that qualifies under the appropriate
19 standards. The Designating Party must designate for protection only
20 those parts of material, documents, items, or oral or written
21 communications that qualify so that other portions of the material,
22 documents, items, or communications for which protection is not
23 warranted are not swept unjustifiably within the ambit of this Order.

24 2. Mass, indiscriminate, or routinized designations are prohibited.
25 Designations that are shown to be clearly unjustified or that have been
26 made for an improper purpose (e.g., to unnecessarily encumber the
27 case development process or to impose unnecessary expenses and
28

1 burdens on other parties) may expose the Designating Party to
2 sanctions.

3 3. If it comes to a Designating Party's attention that information or
4 items that it designated for protection do not qualify for protection,
5 that Designating Party must promptly notify all other Parties that it is
6 withdrawing the inapplicable designation.

7 B. Manner and Timing of Designations

8 1. Except as otherwise provided in this Order (*see, e.g.*, Section
9 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or
10 Discovery Material that qualifies for protection under this Order must
11 be clearly so designated before the material is disclosed or produced.

12 2. Designation in conformity with this Order requires the
13 following:

14 a. For information in documentary form (*e.g.*, paper or
15 electronic documents, but excluding transcripts of depositions or
16 other pretrial or trial proceedings), that the Producing Party affix
17 at a minimum, the legend "CONFIDENTIAL" (hereinafter
18 "CONFIDENTIAL legend"), to each page that contains
19 protected material. If only a portion or portions of the material
20 on a page qualifies for protection, the Producing Party also must
21 clearly identify the protected portion(s) (*e.g.*, by making
22 appropriate markings in the margins).

23 b. A Party or Non-Party that makes original documents
24 available for inspection need not designate them for protection
25 until after the inspecting Party has indicated which documents it
26 would like copied and produced. During the inspection and
27 before the designation, all of the material made available for
28 inspection shall be deemed "CONFIDENTIAL." After the

1 inspecting Party has identified the documents it wants copied
 2 and produced, the Producing Party must determine which
 3 documents, or portions thereof, qualify for protection under this
 4 Order. Then, before producing the specified documents, the
 5 Producing Party must affix the “CONFIDENTIAL legend” to
 6 each page that contains Protected Material. If only a portion or
 7 portions of the material on a page qualifies for protection, the
 8 Producing Party also must clearly identify the protected
 9 portion(s) (e.g., by making appropriate markings in the
 10 margins).

11 c. For testimony given in depositions, that the Designating
 12 Party identify the Disclosure or Discovery Material on the
 13 record, before the close of the deposition all protected
 14 testimony.

15 d. For information produced in form other than document
 16 and for any other tangible items, that the Producing Party affix
 17 in a prominent place on the exterior of the container or
 18 containers in which the information is stored the legend
 19 “CONFIDENTIAL.” If only a portion or portions of the
 20 information warrants protection, the Producing Party, to the
 21 extent practicable, shall identify the protected portion(s).

22 C. Inadvertent Failure to Designate

23 1. If timely corrected, an inadvertent failure to designate qualified
 24 information or items does not, standing alone, waive the Designating
 25 Party’s right to secure protection under this Order for such material.
 26 Upon timely correction of a designation, the Receiving Party must
 27 make reasonable efforts to assure that the material is treated in
 28 accordance with the provisions of this Order.

VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS

A. Timing of Challenges

1. Any party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

B. Meet and Confer

1. The Challenging Party shall initiate the dispute resolution process under Local Rule 37.1 et seq.

C. Should the parties be unable to resolve any dispute over the designation of "CONFIDENTIAL" materials, Counsel for the Designating Party shall have thirty (30) days from receipt of the written Designation Objections to either (a) agree in writing to de-designate Documents, Testimony, or Information pursuant to any or all of the Designation Objections and/or (b) file a motion with the Court seeking to uphold any or all designations on Documents, Testimony, or Information addressed by the Designation Objections (the "Designation Motion"). Pending a resolution of the Designation Motion by the Court, any and all existing designations on the Documents, Testimony, or Information at issue in such Motion shall remain in place. The Designating Party shall have the burden on any Designation Motion of establishing the applicability of its "CONFIDENTIAL" designation. In the event that the Designation Objections are neither timely agreed to nor timely addressed in the Designation Motion, then such Documents, Testimony, or Information shall be de-designated in accordance with the Designation Objection applicable to such material.

D. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the

Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

VIII. ACCESS TO AND USE OF PROTECTED MATERIAL

A. Basic Principles

1. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section XIV below.

2. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

B. Disclosure of "CONFIDENTIAL" Information or Items

1. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

a. The Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

b. The officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

1 c. Experts (as defined in this Order) of the Receiving Party
2 to whom disclosure is reasonably necessary for this Action and
3 who have signed the “Acknowledgment and Agreement to Be
4 Bound” (Exhibit A);
5 d. The Court and its personnel;
6 e. Court reporters and their staff;
7 f. Professional jury or trial consultants, mock jurors, and
8 Professional Vendors to whom disclosure is reasonably
9 necessary for this Action and who have signed the
10 “Acknowledgment and Agreement to be Bound” attached as
11 Exhibit A hereto;
12 g. The author or recipient of a document containing the
13 information or a custodian or other person who otherwise
14 possessed or knew the information;
15 h. During their depositions, witnesses, and attorneys for
16 witnesses, in the Action to whom disclosure is reasonably
17 necessary provided: (i) the deposing party requests that the
18 witness sign the “Acknowledgment and Agreement to Be
19 Bound;” and (ii) they will not be permitted to keep any
20 confidential information unless they sign the “Acknowledgment
21 and Agreement to Be Bound,” unless otherwise agreed by the
22 Designating Party or ordered by the Court. Pages of transcribed
23 deposition testimony or exhibits to depositions that reveal
24 Protected Material may be separately bound by the court
25 reporter and may not be disclosed to anyone except as permitted
26 under this Stipulated Protective Order; and
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- i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

A. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

B. In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. Promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
2. Promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and
3. Make the information requested available for inspection by the Non-Party, if requested.

C. If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the

1 Non-Party shall bear the burden and expense of seeking protection in this
 2 court of its Protected Material.

3 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
 5 disclosed Protected Material to any person or in any circumstance not
 6 authorized under this Stipulated Protective Order, the Receiving Party must
 7 immediately (1) notify in writing the Designating Party of the unauthorized
 8 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
 9 Protected Material, (3) inform the person or persons to whom unauthorized
 10 disclosures were made of all the terms of this Order, and (4) request such
 11 person or persons to execute the “Acknowledgment and Agreement to be
 12 Bound” that is attached hereto as Exhibit A.

13 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 14 **PROTECTED MATERIAL**

15 A. When a Producing Party gives notice to Receiving Parties that certain
 16 inadvertently produced material is subject to a claim of privilege or other
 17 protection, the obligations of the Receiving Parties are those set forth in
 18 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended
 19 to modify whatever procedure may be established in an e-discovery order
 20 that provides for production without prior privilege review. Pursuant to
 21 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an
 22 agreement on the effect of disclosure of a communication or information
 23 covered by the attorney-client privilege or work product protection, the
 24 parties may incorporate their agreement in the Stipulated Protective Order
 25 submitted to the Court.

26 **XIII. MISCELLANEOUS**

27 A. Right to Further Relief
 28

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections

1. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

C. Filing Protected Material

1. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the Court, then the Receiving Party may file the information in the public record unless otherwise instructed by the Court.

XIV. FINAL DISPOSITION

A. After the final disposition of this Action, as defined in Section V, within sixty (60) days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or

1 destroyed and (2) affirms that the Receiving Party has not retained any
2 copies, abstracts, compilations, summaries or any other format reproducing
3 or capturing any of the Protected Material. Notwithstanding this provision,
4 Counsel are entitled to retain an archival copy of all pleadings, motion
5 papers, trial, deposition, and hearing transcripts, legal memoranda,
6 correspondence, deposition and trial exhibits, expert reports, attorney work
7 product, and consultant and expert work product, even if such materials
8 contain Protected Material. Any such archival copies that contain or
9 constitute Protected Material remain subject to this Protective Order as set
10 forth in Section V.

11 B. Any violation of this Order may be punished by any and all
12 appropriate measures including, without limitation, contempt proceedings
13 and/or monetary sanctions.
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15 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**
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18 Dated: April 18, 2023

/s/ Autumn D. Spaeth
HONORABLE AUTUMN D. SPAETH
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare under penalty of perjury that I
 have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Central District of California on
 [DATE] in the case of *Tony Sherman v. Pepperidge Farm, Inc., et al.*, Case No.
 8:22-cv-01781 JWH (ADSx). I agree to comply with and to be bound by all the
 terms of this Stipulated Protective Order and I understand and acknowledge that
 failure to so comply could expose me to sanctions and punishment in the nature of
 contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Stipulated Protective Order to any person
 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print or
 type full name] of _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____